TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 359

HUGH ALLEN BOWEN, PETITIONER,

vs.

JAMES A JOHNSTON, WARDEN, UNITED STATES PENITENTIARY, ALCATRAZ, CALIFORNIA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 16, 1938.

CERTIORARI GRANTED OCTOBER 10, 1938.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

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HUGH ALLEN BOWEN, PETITIONER,

vs.

JAMES A JOHNSTON, WARDEN, UNITED STATES PENITENTIARY, ALCATRAZ, CALIFORNIA

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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 18, 1938.

—7956

[fol. 1]

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. 22539-L

PETITION FOR WRIT OF HABEAS CORPUS—Filed September 25, 1937

To the Honorable A. F. St. Sure, Judge of said District Court and to said District Court and to any Judge thereof:

The petition of Hugh Allen Bowen respectfully shows to the Court:

That he is now in prison and restrained of his liberty by James A. Johnson, Warden, United States Penitentiary, at Alcatraz, California, County of San Francisco and within the jurisdiction of this Court. Petitioner is a citizen of the United States.

That your petitioner is thus imprisoned and held in custody under color of the authority of the constitution and laws of the United States in connection with a certain trial had in the District Court of the United States, for the Northern District of Georgia, on or around February 6, 1932. Just what sort of order, claim or authority petitioner is held under is unknown to him, but he alleges that he is held without authority of law.

Petitioner was indicted jointly, that is in the same bill of indictment, with John E. Smith and Frank Bowen, all three of which were charged with the murder of one Raymond Kington, it being alleged that said crime was committed in the Rome Division of said Northern District of Georgia. Attached hereto is a copy of the indictment which is made a part of this petition and proceedings, and marked Exhibit "A".

[fol. 2] It is claimed that petitioner was convicted and sentenced to be imprisoned for and during the period of his natural life. Petitioner shows that said imprisonment is illegal and in violation of the constitution and laws of the United States for the following reasons to-wit:

1st

That the bill of indictment is so defective that it is insufficient to charge any crime against the United States and is void.

2nd

That the allegations and charges in the indictment are defective and insufficient to show jurisdiction over the person and subject matter and it is therefore void and no legal judgment could be based thereon. That the presumption is against jurisdiction in the United States or Federal Courts and that same cannot be shown or conferred by consent or by mere averments in the Bill of indictment.

3rd

That the indictment is defective and void and any verdict and judgment rendered thereon are fatally defective and void for that it was necessary for the United States District Court to show jurisdiction over the person of the defendant, of the crime charged, and of the exact territory or place where it was alleged to have been committed, to wit, Chickamauga National Park otherwise than by showing or alleging that it was committed within the jurisdiction of the court without fixing a definite place or location or even the county [fol. 3] where committed and without attempting to show exclusive jurisdiction over this national park otherwise than by merely aver-ing tha' said jurisdiction had been conferred upon the United States Courts as follows: "And within the jurisdiction of said court and within a certain place and on certain lands reserved and acquired for the exclusive use of the United States and under the exclusive jurisdiction thereof, and acquired by the United States *States* by consent of the legislature of the State of Georgia".

4th

That no exclusive jurisdiction over said Chickamauga National Park could be so granted by mere consent of the legislature of the State of Georgia, and that to confer and release exclusive criminal jurisdiction to the United States, it would be necessary that the territory, place or places be regularly ceded to the United States by the State of Georgia and that for this reason the indictment was fatally defective even in the absence of a demurrer and no legal judgment or sentence could be based thereon.

5th

That said indictment is void because it does not set forth verbatim or in substance any consent or act of the legis-

lature of Georgia ceding or seeking to cede criminal jurisdiction to the United States, the territory and lands referred to in the indictment, any such consent or act being a local law when taken in connection with federal procedure, which [fol. 4] is necessary to be pleaded.

6th

That said indictment is fatally defective and void and any verdict and judgment rendered thereon is defective and void because under any conviction thereunder a defendant would be denied due process of law for reasons as follows to wit:

1st

That indictment is defective and void in the absence of a demurrer for that said indictment does not even charge a crime against this petitioner or either of the other defendants because it does not state the specific species of offense or the degrees of the alleged offense and does not descend to particulars as required by law.

2nd

For that the indictment necessarily seeks to allege but does not allege a common design and purpose upon the part of the three defendants to kill and murder the deceased and does not allege or sufficiently charge any conspiracy or unlawful agreements to compass a criminal purpose as required by law.

3rd

For that the indictment does not charge a common design conformable to the federal statute against murder and does not allege guilty knowledge, criminal purpose or any sort of co-operation among the three defendants and does not show or aver any guilty knowledge upon the part of this [fol. 5] petitioner, which is fatally defective even after verdict and petitioner is, as a matter of right, entitled to his discharge under a Writ of Habeas Corpus.

4th

That said indictment if fatally defective and any judgment and sentence based thereon, if there be such, is fatally defective and void because all material facts as to the time, the place (Chickamauga National Park embraces as peti-

tioner is informed and believes, over 28,000 acres of land embracing large areas of territory of both Walker and Catoosa Counties), and circumstances of the alleged crime are not set forth with any sort of definiteness, certainty or particularity.

5th

Because defendant was denied due process of law for that the case was transferred from the Atlanta Division of the District Court to the Rome Division thereof upon motion of the District Attorney without the consent of petitioner and not being so transferred upon motion made by petitioner and because the case was tried in the county of Floyd in the State of Georgia, instead of in the county of Catoosa where the crime is supposed to have been committed, and at a place and in a county where no part of Chickamauga National Park lies, the counties of Chattooga and Walker lying in between the counties of Floyd and Catoosa in the State of Georgia, and said trial being had at a place around 55 miles from the scene of the alleged crime.

[fol. 6] 6th

The indictment is fatally defective because it does not allege any act done or committed by this petitioner and does not allege any criminal intent, design or purpose upon his part to commit a crime.

7th

That he is deprived of his lawful and rightful day in court and due process of law because the bill of indictment does not give full notice of all the material facts constituting the offense charged, that is to say with at least reasonable certainty and definiteness in what county and place by reference to other known objects or location where the crime was committed, how it was committed, what part thereof, if any, this petitioner did and performed and the circumstances under which it was committed, if so committed, without which allegations and charges there can be no due process of law and petitioner is dischargeable under the hight prerogative Writ of Habeas Corpus.

8th

Because petitioner was not furnished with a copy of the indictment and a list of witnesses as required by law, prior to his trial.

9th

Because said District Court and the Judge thereof did not have a stenographic copy of the testimony at the trial taken down and preserved so that petitioner and his at-
[fol. 7] torney might hope to appeal the case to a higher court, and petitioner says that for this reason he was denied due process of law and equal protection under the law to which he was entitled.

10th

Because under the allegation in the indictment only one of the defendants could be guilty of the crime and since Smith now takes it all on himself, petitioner should be acquitted, liberated and vindicated in justice, in grace, at the hands of this court.

11th

Because petitioner was convicted along with John E. Smith of an offense that, under the Bill of Indictment, only one of them could have committed, it being impossible for both of them to be guilty under the averments, charges and physical facts charged in the bill of indictment.

12th

The indictment is fatally defective in the absence of a demurrer because it fails to allege that the killing was done wilfully, *feloniously* and of malice aforethought, because the felonious intent is an essential ingredient of the crime, and that such is a substantial defect not cured by verdict.

13th

The indictment is fatally defective even in the absence of a demurrer for that there are no criminal acts or criminal intent charged against petitioner with any degree of reason-
[fol. 8] able particularity as to the time, place or circumstances.

14th

Petitioner avers and shows that the denial of the substantial rights as set forth was a denial of due process of law as contemplated and guaranteed by the fifth amendment to the constitution of the United States, the material part of which reads as follows: "No person * * * shall be deprived of life liberty or property without due process of law." Petitioner avers that he was denied that fair and impartial trial according to the established customs and of immemorial usage, part of which came to every American citizen from the great common law of England, recognized and vouch-safed to every citizen of the United States, the cardinal rules of which have been in force in England and America since the Magna Charter was wrested from King John at Runnymede.

Petitioner avers that the denial to him of his rights and the disregard of his legal and constitutional right as herein set forth was a contravention of the principles of liberty and justice, which inhere in the very idea of a free government which principles are immutable and to which every defendant is entitled by virtue of due process of law, the law of the land, which implies and requires conformity to those immutable and fundamental principles which neither Congress nor any State in the Union can disregard, which great cardinal and salutary fundamental principles were [fol. 9] designed to secure each individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private right and distributive justice.

It being the policy of Federal courts to regard Habeas corpus as a matter of grace we submit that it is highly proper to discharge the defendant upon other grounds to-wit:

1st

That two fellow prisoners, one Wayne Jarrett and one Robert L. Hollifield, made affidavits voluntarily while petitioner and said John E. Smith were stationed at the Atlanta penitentiary, that Smith made a voluntary, unsolicited statement to them one day that Bowen, your petitioner, had nothing to do with the commission of the murder, that he killed Kington himself and alone while Bowen lay fast asleep in an automobile and that Bowen knew nothing of the killing

until after it was all done and committed. Copies of these two affidavits are attached hereto and made a part hereof, and marked Exhibits "B" and "C", respectively.

2nd

Petitioner submits that while ordinarily the writ of Habeas Corpus will not be granted where there is a remedy by writ of error or appeal, that in rare cases it is proper to issue it although such other remedy exists and that the case as submitted above and hereinafter is a rare case and [fol. 10] that the writ of Habeas Corpus is the proper remedy.

3rd

Petitioner submits another cardinal reason why he should be discharged to-wit: While he was tried February 6, 1932, that upon his application later the certified copy of the Bill of Indictment purporting to carry all entries and notations thereon furnished to him under the signature of the Clerk of the United States District Court for the Northern District of Georgia, bearing date of February 2, 1933, bearing the official seal thereof and that said certified copy carries no verdict and no judgment or sentence, the spaces and places allotted therefor are wholly blank with nothing written thereon. Wherefore petitioner says that there is no judgment of conviction or sentence upon which to base his committment or detention, and that for thi*d* reason, within and of itself petitioner should be speedily discharged. (See certified copy of Bill of Indictment as herein set forth, with all entries thereon under Exhibit "A", attached to this petition.)

4th

Because the United States has no exclusive jurisdiction over Chickamauga National Park.

5th

Petitioner would show another cardinal reason why he [fol. 11] should be liberated under the high prerogative writ of Habeas Corpus in view of the decisions of the Supreme Court of the United States to the effect that the general policy of federal courts is to regard Habeas Corpus, a matter of grace rather than a matter of right and because of petitioner's good conduct since confinement and because

of the expressed opinion of Judge E. Marvin Underwood, District Judge of the United States Courts for the Northern District of Georgia, in whose court and before and by whom petitioner was tried with the aid of a jury, to the effect that in his opinion it would be proper and well to liberate petitioner if "his conduct and attitudes since conviction have been such as to show that a reformation has taken place in his character and that it would be safe to restore him to society * * *, said Judge Underwood stating that he felt that the question (of release) should be determined by his subsequent conduct and attitudes. These expressions of opinion by Judge Underwood having been made in a letter dated Atlanta, Ga., May 8, 1937, addressed to Mrs. W. L. Bowen, mother of petitioner at La Fayette, Ga. Copy of said letter is hereto attached and marked Exhibit "D", and made a part of this petition.

5th

Petitioner shows that he was convicted upon purely circumstantial evidence with no direct evidence whatever to corroborate it and in view of the fact that circumstantial evidence is always at best uncertain, fallible, treacherous, dangerous and unreliable, and that he should be speedily liberated at this time.

[fol. 12]

6th

Petitioner submits other grounds upon which he importunes the court to discharge him at this time to wit:

1st

On account of his youth, being only 28 years of age at the time of the alleged crime, his inexperience and his first time in any court.

2nd

On account of his conviction being based purely and solely upon circumstantial evidence.

3rd

On account of his burning desire to be with and provide for his litile daughter, Frances Bowen, who is only 10 years of age and of his hearts desire to be with or near his

mother, who is a widow, that he may assist her, she being without property or remunerative position.

4th

On account of petitioner's absolute innocence of the charge.

Wherefore petitioner prays:

That a proper writ of Habeas Corpus may issue out of the District Court of the United States for the Northern District of California, directed to the said James A. Johnson, Warden of the United States Penitentiary at Alcatraz, California, within and under the jurisdiction of this court requiring him to produce the body of your petitioner before said court at some convenient time to be therein designated [fols. 13-14] there to abide what shall be awarded by the court in the premises to the end that your petitioner may be hence discharged from said detention and imprisonment.

Hugh Allen Bowen (Hugh Allen Bowen, Petitioner, Sign Here). David F. Pope, Attorney for Petitioner, La Fayette, Ga.

Duly sworn to by Hugh Allen Bowen. Jurat omitted in printing.

[fol. 15] EXHIBIT "A" TO PETITION

UNITED STATES OF AMERICA, NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

In the District Court of the United States, in and for the Division and District aforesaid, at the October term thereof, A. D. 1931.

The Grand Jurors of the United States impanneled, sworn and charged at the term aforesaid, of the court aforesaid, on their oath present that John E. Smith, alias John Eddington, Hugh A. Bowen, alias Hugh Allen, alias Henry Boss, and William Frank Bowen, alias Frank Bowen, hereinafter called the defendants, on the 14th day of December, in the year 1930 A. D. in the Rome Division of the District aforesaid, and within the jurisdiction of said court, and within a certain place and on certain lands reserved and

acquired for the exclusive use of the United States and under exclusive jurisdiction thereof, and acquired by the United States by consent of the Legislature of the State of Georgia, to wit: Chickamauga and Chattanooga National Park, sometimes known as Chickamauga and Chattanooga National Military Park, in said State of Georgia did then and there unlawfully, willfully, deliverately and with malice aforethaught upon one, Raymond Kington, a human being, make an assault and did then and there him, the said Raymond Kington, unlawfully, willfully, deliberately, maliciously, premedi-atedly and with malice aforethaught kill and murder by shooting and wounding him, the said Raymond Kington, in the head, neck and face with a certain [fol. 16] loaded shotgun, a more perfect description of said shotgun being to the grand jurors unknown, then and there held in the hands of one of said defendants but which particular one of said defendants is to the grand jurors aforesaid unknown, the said loaded shotgun being then and there an instrument likely to produce death, and said defendants did thereby inflict, cause and produce a certain mortal wound and wounds in the head, neck and face of him, the said Raymond Kington, from which mortal wound and wounds by the said defendants so inflicted aforesaid, he, the said Raymond Kington, on the 14th day of December A. D. 1930, did then and there die; Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. Clint W. Hager, United States Attorney.

(Entries on back of Indictment to wit:) 2579 Rome, United States District Court, Atlanta Division, Northern District of Georgia. The United States vs. John E. Smith, alias John Eddington, Hugh A. Bowen, alias Henry Boss and William Frank Bowen, alias Frank Bowen, Catoosa County, Ga. Indictment for Violation of section 273 Penal Code, Murder on Government Reservation. A true Bill, Harold N. Cooledge, Foreman of Grand Jury. Filed in Open Court Nov. 13th. 1931, O. C. Fuller, Clerk by Jon Dean Steward, Deputy Clerk, Clint W. Hager, U. S. Attorney. BW Nov. 16, 1931, Smith and Hugh Bowen, BW Dec. 7th, 1931, W. Frank Bowen. Back or Cover of Indictment with Plea and Judgement. Witnesses: E. F. Land, J. F. Kington, J. M. Kington, Martha M. McDearman. [fol. 17] This case transferred from Atlanta to Rome by

order of court on motion of District Attorney, and filed and docketed the 11th, day of May A. D. 1932, O. C. Fuller, Clerk, by John L. Harris, Deputy Clerk.

UNITED STATES OF AMERICA,
Northern District of Georgia, ss:

I, Jon Dean Steward, Clerk of the District Court of the United States in and for the Northern District of Georgia, do hereby certify that the foregoing and attached is a true, full, complete and correct copy of the indictment with entries and notations thereon, in the matter of the United States of America vs. John E. Smith, alias John Eddington, Hugh A. Bowen, alias Henry Boss, and William Frank Bowen, alias Frank Bowen, Indictment No. 2579, of file in the Clerk's office of said District Court at Rome, Georgia. In testimony whereof I hereunto set my hand and affix the seal of said District Court at Atlanta, Georgia, this the 2nd day of February A. D. 1933.

Jon Dean Stewart, Clerk United States District Court, Northern District of Georgia. (Seal Impressed here, bearing words "U. S. District Court, N. D. Georgia.")

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF GEORGIA, ROME DIVISION, —— TERM, 193—

No. 2579

THE UNITED STATES OF AMERICA

vs.

JOHN E. SMITH, Alias JOHN ADDINGTON, HUGH A. BOWEN, Alias HENRY BOSS, and WILLIAM FRANK BOWEN, Catoosa County, Ga.

Certified Copy of Indictment

[fol. 18] On the indictment is the following:

Plea

The defendant —— —— waives arraignment and pleads —in open Court, this — day of ——, 19—.

—— ——, Defendant.

Verdict

We the jury find the defendant —— —— this — day of —— 193—.

—— ——, Foreman.

Judgment

—Certified copy of foregoing Indictment Within, ——.

[fol. 19] EXHIBIT "B" TO PETITION

COUNTY OF FULTON,
State of Georgia, ss:

Affidavit

Wayne Jarrett, who being duly sworn, deposes and says that he is a citizen of the United States of legal age and that he knows the nature and import of an oath.

Affiant further states that he was on the Stockade of the U. S. Prison at Atlanta, Ga. in the early part of August 1933, talking to a man by the name of Robert L. Hollifield and showing him some letters concerning my parole and asking him if he would help me prepare them. While Hollifield and myself were discussing them a man came up to us and asked Hollifield if he was a nurse in the hospital. Hollifield told him yes and then this man asked Hollifield if he knew a man over there in the hospital who had kidney trouble by the name of Hugh Bowen. Hollifield told him that he did and that Bowen was in bad shape at that time. This man then said he was here on the same charge as Bowen. Hollifield then said to him that Bowen had told him that there was another man here on the same charge and for the same crime. This man then told affiant and Hollifield that his name was Smith and that he Smith, had the same amount of time in prison as Bowen. Affiant Smith and Hollifield then all began to discuss the amount of time that both Bowen and Smith had, and then I asked Smith how it was that two men, Bowen and Smith had received so much time for the same crime and why it was that one of them, Smith and Bowen, did [fol. 20] not take the blame for the crime and let the other go free. Smith then began to cuss Bowen and said that he

Bowen, was the cause of it all. Hollifield then told Smith that Bowen was of the opinion that he, Smith, had intended to kill him, Bowen. Smith then told Hollifield, hell no for if I had intended to do that all that I would had to do was to go over to the car where Bowen was asleep and drunk and had passed out. Smith then further stated that Bowen did not know anything about where the man was killed as he was not killed where he was found. Smith then said that Bowen awoke at the sound of the gun and that it was the first that he, Bowen, knew of it. Hollifield then asked Smith where he was arrested and he, Smith, replied in the state of Oregon and that Bowen was arrested in the state of Washington. Smith then said that a darn fool in Chattanooga was the cause of their, Smith and Bowen's arrest, and that they were brought there and held in jail for two years before trial. Just at this time the bell rang and affiant returned to his cell. Affiant further states that this affidavit is freely and voluntarily made and without hope or offer of reward. Further affiant saith not.

Wayne Jarrett, Affiant. Reg. No. 42888.

Sworn and subscribed to before me this 20 day of Oct. 1933. M. O. Hollis, Notary Public. (Seal of Office Impressed.)

[fol. 21] EXHIBIT "C" TO PETITION

COUNTY OF FULTON,
State of Georgia, ss:

Affidavit

Robert L. Hollifield being duly sworn deposes and says that he is a citizen of the United States, of legal age and that he knows the nature and import of an oath.

Affiant further states that he was on the Prison Stockade here at the U. S. Prison in Atlanta, Ga. alone in the first part of Aug. 1933 under what is known as the parole three when Wayne Jarrett walked up and began to show me some papers that he, Jarrett, had received concerning his parole. Jarrett then asked me if I would help him with

his papers and while Jarrett and affiant were discussing these papers another man walked up and asked affiant if he was a nurse in the Hospital. Affiant told him yes, and he, Smith, asked if affiant knew a patient over there by the name of Hugh Bowen. Affiant told him, Smith, that I did and said that Bowen was in bad shape at this time. This man Smith then told affiant that he, Smith was here on the same crime as Bowen and then stated that his name was Smith. Affiant, Smith and Jarrett then began discussing about the amount of time that both Smith and Bowen had. Then Jarrett asked Smith why it was that both of them, Smith and Bowen, were here on the same crime and why it was not one of them, Smith or Bowen, did not take the blame and let the other go free. Smith then began to cuss Bowen and stated that Bowen was no good and that [fol. 22] Bowen was the cause of Smith trouble. Affiant then told Smith that Bowen was of the opinion that he, Smith had intended to kill him. Smith then said that if he, Smith, had intended to do that, he, Smith would have gone over to the car where Bowen was both asleep and drunk and that it would have been easy to kill Bowen as he, Bowen was so drunk that he Bowen, had passed out. Smith then said that Bowen did not know anything about where the man was killed for the man was not killed where he was found, and that the first thing Bowen knew about the killing was when the gun was fired and awoke him, Bowen. Affiant then asked Smith where he was arrested and he, Smith, said in Oregon and that Bowen was arrested in the State of Washington. Smith further said that a man from Chattanooga was the cause of the arrest and that he, the man in Chattanooga, had them brought back there and that they, Smith and Bowen, were forced to wait for nearly two years before a trial. Just at this time the bell rang and all of us returned to our cells. Affiant further states that this affidavit is freely and voluntarily made and without hope or the offer of reward. Further affiant sayeth not.

Robert Hollifield, Affiant. Reg. #42487.

Sworn and subscribed to before me this the 20 day of Oct., 1933. M. O. Hollis, Notary Public. (Seal Impressed.)

[fol. 23] EXHIBIT "D" TO PETITION

E. Marvin Underwood, District Judge.

United States Courts, Northern District of Georgia,
Judge's Chambers

Atlanta, Ga., May 8th, 1937.

Mrs. W. L. Bowen, La Fayette, Ga.

DEAR MRS. BOWEN:

Your letter of April 20th, asking that I recommend the release by commutation or pardon of your son, Mr. Hugh A. Bowen, has been received.

I do not feel that I have sufficient information at this time to make any recommendation. In cases of this kind I feel that the question of release should be largely determined by a most careful consideration of the accused's conduct and attitudes since conviction and whether or not those who have carefully studied and observed these things feel that a reformation has taken place in his character, and that it would be safe to restore him to society, and whether he would, if released, live the life of an upright citizen. The information that I got at the trial did not show such conduct up to that time as to justify a recommendation on my part, so that I feel the question should be determined by his subsequent conduct and attitudes.

[fols. 24-25] While I do not feel that I am at this time sufficiently informed to make a recommendation, I will not oppose the granting of a commutation or pardon by those who have the determination of such question.

With my sympathy and kind regards, I am,
Sincerely yours, E. Marvin Underwood, U. S. District Judge.

Original letter within.

[fols. 26-49] Statement of facts and Brief of law omitted in printing.

[fol. 50] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER TO SHOW CAUSE—Filed September 29, 1937

Good cause appearing therefor and upon reading the verified petition on file herein:

It is Hereby Ordered,

That James A. Johnson, Warden of the United States Penitentiary at Alcatraz, California, within the jurisdiction of this court, appear before this court on the 2nd day of October, 1937, at the hour of 9:30 o'clock A. M. of said day, to show cause, if any he has, why a writ of habeas corpus should not be issued herein, as prayed for, and that a copy of this order be served upon the said James A. Johnson, Warden aforesaid, and a copy of the petition and this order be served upon the United States Attorney for this district, his representative herein.

And it is Further Ordered and Directed,

That said James A. Johnson, Warden aforesaid, shall retain the said Hugh Allen Bowen within the jurisdiction of this court until its further order herein.

Dated at San Francisco, California this 28th day of September, 1937.

Harold Louderback, United States District Judge.

[fol. 51] IN UNITED STATES DISTRICT COURT

[Title omitted]

RETURN TO ORDER TO SHOW CAUSE—Filed October 9, 1937

Comes now James A. Johnston, Warden of the United States Penitentiary at Alcatraz, California, and for cause why a writ of habeas corpus should not issue herein, shows as follows:

I

That the person (hereinafter called "the prisoner") on whose behalf the petition for writ of habeas corpus was filed, is detained by your respondent, James A. Johnston, as Warden of the United States Penitentiary at Alcatraz, California, under and by virtue of the judgment and sen-

tence, and order of commitment, duly and regularly issued in Criminal Case No. 2576—Rome Division, on the 16th day of February, 1933, by District Judge E. Marvin Underwood of the Northern District of Georgia, and Transfer Order No. 17448 issued at Washington, D. C. for the Attorney General of the United States of America by Sanford Bates, Director of Bureau of Prisons of the Department of Justice of the United States of America, dated August 15, 1934.

[fol. 52]

II

That a certified copy of said judgment and sentence, and order of commitment, issued as aforesaid, is annexed hereto and made a part hereof as Respondent's Exhibit "A".

III

That a certified copy of the Transfer Order issued as aforesaid is annexed hereto and made a part hereof as Respondent's Exhibit "B".

IV

That a certified copy of the record of Court Commitment of the United States Penitentiary, Alcatraz, California is annexed hereto and made a part hereof as Respondent's Exhibit "C".

Wherefore respondent prays that the petition for writ of habeas corpus be dismissed.

James A. Johnston, Warden of the United States Penitentiary at Alcatraz, California.

[fol. 53] EXHIBIT "A" TO RETURN

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA, ROME DIVISION, NOVEMBER TERM, A. D. 1932

THE UNITED STATES OF AMERICA

versus

HUGH A. BOWEN Alias HENRY BOSS

CATOOSA COUNTY, GEORGIA:

True Bill of Indictment, No. 12692, returned into Open Court by the Grand Jury, at Atlanta, Georgia, and filed

November 13th, 1931, and Transferred from the Atlanta Division to the Rome Division of said District, and received and filed at Rome, Georgia, May 11th, 1932, and Numbered 2579, wherein the defendant is charged, with others, with the Offense of Murder on Government Reservation, in violation of Section 273 of the Penal Code of the United States. Plea Not Guilty, February 6th, 1933, Verdict of Guilty Without Captial Punishment" on February 11th, 1933, and Imposition of Sentence Deferred to February 15th, 1933 and Defendant Remanded to Floyd County Jail to Await Judgment of the Court. February 15th, 1933, Imposition of Sentence Further Deferred and Defendant again Remanded to Jail to await the Judgment of the Court.

Sentence.—Life Imprisonment in Such Penitentiary as the Attorney General of the United States May Designate.

The defendant in the above stated cause was convicted on the 11th day of February, A. D., 1933, of the offense charged against him in the above referred to and numbered indictment, with the qualified verdict of "Without Capital Punishment", and thereupon, for reasons satisfactory to the Court the imposition of Sentence was Deferred to the 15th day of February, A. D. 1933, and the defendant was remanded to Floyd County, Georgia, jail to await the Judgment of the Court herein, and

On February 15th, A. D. 1933, the defendant was brought into Open Court in the custody of the United States Marshal [fol. 54] to receive and abide the judgment of the Court herein, and for reasons satisfactory to the Court the imposition of sentence was deferred from day to day, until the further order of the Court, and he was again remanded to Floyd County Jail to the Court, and

Now, on this day, the defendant was brought into open Court, upon the verbal order of the Court, in the Custody of the Marshal, to receive and abide the judgment of the Court herein, whereupon he was called before the bar of the Court, and enquired of if he had anything to say why judgment should not be pronounced against him, and there being no good and sufficient cause shown why judgment should not be pronounced against him;

It is Thereupon, Now During the Same Term of the Court, Considered, Ordered and Adjudged by the Court, by reason of the Verdict of Guilty "Without Capital Punish-

ment" herein, That the said defendant, Hugh A. Bowen, alias Henry Boss, now present in Court, be imprisoned in such Penitentiary as the Attorney General of the United States, or his authorized representative may designate, for and during the remainder of his natural life, and that the execution of said sentence shall commence to run from the date the defendant is committed to jail, or other place of detention to await transportation to the place at which this sentence is to be served.

In Open Court, this the 16th day of February, A. D., 1933.

E. Marvin Underwood, U. S. Judge.

I, Jon Dean Steward, Clerk of said Court, do hereby certify that the above is a true copy of the original sentence, in the case stated, as appears of record in my office.

Witness my hand and the seal of said Court, at Rome, Georgia, this the 16th day of February, A. D., 1933.

(Signed) Jon Dean Steward, Clerk, U. S. District Court, Northern Dist. of Ga.

[fol. 55] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE ROME DIVISION OF THE NORTHERN DISTRICT OF GEORGIA, NOVEMBER TERM, A. D. 1932

To the United States Marshal for the Northern District of Georgia, Atlanta, Georgia, Greeting:

You are hereby commanded to receive and commit to the custody of the Attorney General of the United States, or his authorized representative, the body of Hugh A. Bowen, alias Henry Boss, charged with, and convicted, in said Court of Violation of Section 273 of the Penal Code of the United States, to-wit:

"Murder on Government Reservation",

to be safely kept until thence delivered by due process of law.

Witness the Honorable E. Marvin Underwood, Judge of the District Court of the United States for the Northern District of Georgia, and the Seal of the said District Court, at Rome, Georgia, this the 16th day of February, A. D. 1933.

(Signed) Jon Dean Steward, Clerk, U. S. District Court, Northern Dist. of Ga.

UNITED STATES DISTRICT COURT FOR THE ROME DIVISION OF THE NORTHERN DISTRICT OF GEORGIA, NOVEMBER TERM, 1932

No. 2579

THE UNITED STATES

vs.

HUGH A. BOWEN, Alias HENRY BOSS

CATOOSA COUNTY, GEORGIA:

Copy of Sentence and Commitment Dated February 16 A. D., 1933.

Clint W. Hager, United States Attorney.

[fol. 56] A true copy, October 6, 1937. Walter T. Dorington, Record Clerk, U. S. P. Alcatraz, California.

[fol. 57] EXHIBIT "B" TO RETURN

Miscellaneous Form No. 39 (a).
Sanford Bates, Director.

Department of Justice, Bureau of Prisons, Washington

Per Transfer Order #1748.

To the Warden of U. S. Penitentiary Annex, Ft. Leavenworth, Kansas, or his duly authorized representative; and to the Warden of the U. S. Penitentiary, Alcatraz Island, California:

Whereas, in accordance with the authority contained in Section 7 of the Act approved May 14, 1930 (46 Stat. 325) the Director of the Bureau of Prisons for the Attorney General has ordered the transfer of Hugh A. Bowen, #5332 from the U. S. Penitentiary Annex, Ft. Leavenworth, Kansas, to the U. S. Penitentiary at Alcatraz Island, California.

Now Therefore, you the Warden of the U. S. Penitentiary Annex, at Ft. Leavenworth, Kansas, are hereby authorized and directed to execute this order by causing the removal of said prisoner together with the original writ of commitment and other official papers to the said U. S. Penitentiary at Alcatraz Island and to incur the necessary expense and include it in your regular accounts.

And you the Warden of the U. S. Penitentiary at Alcatraz Island are hereby authorized and directed to receive the said prisoner into your custody and him safely keep until the expiration of his sentence or until he is otherwise discharged according to law.

For the Attorney General.

(Signed) Sanford Bates, Director.

(Date:) Aug. 15, 1934.

A true copy, October 6, 1937. Walter T. Dorington, Record Clerk, U. S. P. Alcatraz, California.

Original to be left at institution to which prisoner is transferred.

(Here follows one photolithograph, side folios 58-59)

58-69

EXHIBIT "C" To return

RECORD OF COURT COMMITMENT
UNITED STATES PENITENTIARY, ALCATRAZ, CALIFORNIA

Original for Central File

Inst. Name BOWEN, Hugh A. No. 173-AZ

Alias Henry Boss Color White Age 32

True Name Hugh A. Bowen Name and number of prior commitments to Fed. Inst. Hugh A. Bowen, #42891, Atlanta, Ga
" " " #5332, Leavenworth Annex.
" " " USH, Springfield

Offense MURDER (Gov't Reserv.)

District N/Ga., - Rome

Sentence LIFE Costs Fines XXX Committed XX Not Committed Paid
Committed Not Committed Paid

Sentence changed New term Reason therefor

Sentenced February 16, 1933 When arrested Feb. 12, 1931

Committed to Fed. Inst. Mar. 27, 1933 Where arrested Centralia, Wash.,

Sentence begins Feb. 16, 1933 Residence Lafayette, Ga.

Eligible for parole Feb. 15, 1948 Time in jail before trial From arrest

Eligible for conditional release with good time Rate per mo. good time Total good time possible

Eligible for con. rel. with extra good time

A TRUE COPY, Oct. 6, 1937
WALTER F. DORINGTON
Record Clerk, USP Alcatraz

Forfeited good time Amount forfeited

Restoration good time Amount Restored

Expires full term LIFE

Former Commitments on Sentence to Other Institutions

No.	Name of Institution	Location
42891	USP	ATLANTA, GA.
?	USHosp	SPRINGFIELD, Mo.
5332	USP	LEAVENWORTH ANNEX Ft. Leav. Kansas

(Transferred to Alcatraz, Sept. 4, 1934)

Person to be notified in case of Serious illness or death

NAME WILLIAM BOWEN

RELATION TO PRISONER FATHER

ADDRESS LAFAYETTE, GEORGIA

TELEPHONE

[fols. 60-63] Memorandum of points and authorities against petition for writ of habeas corpus omitted in printing.

[fol. 64] In United States District Court

[Title omitted]

Minute Entry of Submission—October 9, 1937

This cause came on regularly this day for hearing on the Order to Show Cause as to the issuance of a Writ of Habeas Corpus. No appearance was made by the Attorneys for the petitioner. A. J. Zirpoli, Esq., Assistant United States Attorney, appeared on behalf of James A. Johnston, Warden of the United States Penitentiary at Alcatraz, California, and filed said Respondent's Return to the Order to Show Cause. On motion of Mr. Zirpoli, it is ordered that the Petition for Writ of Habeas Corpus be, and the same is hereby submitted.

[fol. 65] In United States District Court

No. 22539-L

In the Matter of H. A. Bowen, on Habeas Corpus

Order Denying Petition for Writ of Habeas Corpus—October 11, 1937

The Petition for Writ of Habeas Corpus having been submitted and due consideration having been thereon had, it is Ordered that said Petition be and the same is hereby Denied.

[fol. 66] Motion for leave to file and docket transcript and proceed in forma pauperis omitted in printing.

[fols. 67-68] Affidavit of forma pauperis omitted in printing.

[fol. 69] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed January 7, 1938

Comes Now Hugh Allen Bowen, in the above-entitled cause and respectfully shows to this Honorable Court that on the 11th day of October 1937 A. D. a final judgment was rendered and entered of record, disallowing the Petitioner's Writ of Habeas Corpus and refusing to issue said Writ to all of which action and ruling of the court Petitioner was allowed an exception.

That in said action and ruling of the court and the judgment and proceedings errors were committed to the harm and prejudice of Petitioner, all of which will appear in detail in the assignment of errors hereto attached.

Wherefore, Petitioner prays that an appeal be allowed from such action, ruling and final judgment to the Circuit Court of Appeals for the Ninth Judicial Circuit and;

Your Petitioner prays that a transcript of records and proceedings and papers upon which such order was made duly authenticated may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit at San Fran-
[fol. 70] cisco, California.

Hugh Allen Bowen, Pro Se, Petitioner and Appellant.

[fol. 71] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed January 7, 1938

Comes Now Hugh Allen Bowen on this 11th day of December, 1937 A. D. in the above-entitled action and says that in the record and proceedings aforesaid, there is manifest errors in this, to-wit:

1st

The United States District Court (supra) erred in failing to hold that Indictment No. 2579 failed in any manner, form or substance to charge your Petitioner, Hugh Allen Bowen with any offense whatever against the laws of the United States of America.

2nd

The United States District Court of the Northern District Southern Division, at San Francisco, California, erred in denying the application for Writ of Habeas Corpus.

3rd

The United States District Court (supra) erred in holding that the judgment was valid, in cause No. 2579.

4th

The United States District Court (supra) erred in fail-
[fol. 72] ing to hold the Commitment in Cause No. 2579 (supra) was invalid therefore null and void.

5th

The United States District Court (supra) erred in failing to produce the body of Petitioner as provided under and by Section 458 Title 28 of the United States Code.

Wherefore Petitioner prays that the order and judgment aforesaid be reversed, annulled and held for naught and your Petitioner go hence without day and mandate issue forthwith and for such other relief as may be proper in the premises.

Hugh Allen Bowen, Pro Se, Appellant.

[fol. 73] In United States District Court

[Title omitted]

Order Allowing Appeal—Filed January 7, 1938

Appeal allowed this 7th day of January, 1937.

It is further ordered that said Petitioner be and he is hereby allowed to prosecute said appeal in forma pauperis.

Harold Louderback, United States District Judge.

[fol. 74] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed January 7, 1938

To the Honorable Clerk of Said Court:

You are hereby requested that under the ruling of the Court, you prepare a transcript of the record in the above-entitled cause, to be filed in the office of the Clerk of the United States Circuit Court of Appeal, for the Ninth Circuit, San Francisco, California, under notice of appeal from the foregoing court, and to include:

1. Petition for Writ of Habeas Corpus
2. Response
3. Order denying Writ of Habeas Corpus
4. Notice of Appeal
5. Petition for appeal
6. Assignment of Errors
7. Order allowing appeal
8. Praecipe of Transcript.

Hugh Allen Bowen, Pro se, Petitioner.

[fol. 75] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 76] Citation, in usual form, showing service on Frank J. Hennessey, filed January 11, 1938, omitted in printing.

[fol. 77] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 8753

ORDER OF SUBMISSION—May 12, 1938

Ordered appeal in above cause submitted to the Court, upon motion of Mr. A. J. Zirpoli, Assistant United States Attorney, counsel for appellee, on briefs on file; that said counsel is hereby granted leave to file copy of Statutes of Georgia and Federal Statutes involved in this cause.

[fol. 78] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 8753

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENT—June 27, 1938

By direction of the Court, Ordered that the typewritten opinion rendered by this court in above cause be forthwith filed by the clerk, and that a judgment be filed and recorded in the minutes of this court in accordance with the opinion rendered.

[fol. 79] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 8753

HUGH ALLEN BOWEN, Appellant,

vs.

JAMES A. JOHNSTON, Warden of the United States Penitentiary Alcatraz Island, Appellee

Upon Appeal from the District Court of the United States for the Northern District of California

OPINION—Filed June 27, 1938

Before Garrecht, Haney and Stephens, Circuit Judges

STEPHENS, Circuit Judge:

This is an appeal from an order of the United States District Court for the Northern District of California denying appellant a writ of habeas corpus.

The facts are not in dispute. Appellant is confined in the United States prison at Alcatraz Island, California, under restraint of defendant, the prison warden. He was indicted Dec. 14, 1930; convicted of murder under the provisions of § 273 of the Penal Code of the United States [18 U. S. C. A., § 452]; sentenced to life imprisonment by the United States District Court of Georgia for the Northern Division; and transferred from an eastern prison to Alcatraz by order of the Attorney General.

The indictment, upon which appellant was tried and convicted, charged him, together with John E. Smith and Frank Bowen, with shooting one Raymond Kington to death with a shot gun within the Rome Division of the Northern District of Georgia "within the jurisdiction of said court, and within a certain place and on certain lands reserved and [fol. 80] acquired for the exclusive use of the United States and under exclusive jurisdiction thereof, and acquired by the United States by consent of the legislature of the State of Georgia, to-wit: Chickamauga and Chattanooga National Park, sometimes known as Chickamauga and Chattanooga National Military Park, in said State of Georgia * * *."

Appellant's principal claim is that the District Court in which he was tried had no jurisdiction over the Park in which it is alleged the crime was committed for the reason that jurisdiction over such area could not constitutionally have been ceded to the United States and in fact was not so ceded, and that the indictment is defective in not alleging the details of such cession to the United States by the State of Georgia.

In Archer v. Heath, 30 Fed. (2d) 933 (C. C. A. 9, 1929), the court said:

"Where a judgment of a United States Court is attacked directly by appeal, the judgment will be reversed, unless the jurisdictional facts appear some place in the record; but on a collateral attack, such as by habeas corpus, the judgment is presumptively valid, unless it appears affirmatively from the record that the court was without jurisdiction. This distinction has been repeatedly recognized by the Supreme Court, and it has been universally held that a petitioner is not entitled to a discharge on habeas corpus simply because the record of conviction fails to show affirmatively the jurisdiction of the court in which the conviction was had. Ex parte Cuddy, 131 U. S. 280, 9 Sup. Ct. 703, 33 L. Ed. 154; United States v. Pridgeon, 153 U. S. 48, 14 Sup. Ct. 746, 38 L. Ed. 631; Knewel v. Egan, 268 U. S. 442, 45 Sup. Ct. 522, 69 L. Ed. 1036." [Page 933.]

In Walsh v. Archer, 73 Fed. (2d) 197 (C. C. A. 9, 1934), an habeas corpus proceeding, the petitioner contended that the alleged murder was not committed on the high seas on board a vessel but rather within the State of California

and within the jurisdiction of the courts of that State. This court said:

"Whether the location of the alleged crime was upon the high seas and exclusively within the jurisdiction of the United States required consideration of many facts and seriously controverted questions of law, including the alleged error involving the jurisdiction of the court. [fol. 81] "If petitioner's contention be true, then every person serving a sentence for an offense alleged to have been committed on the high seas, within the limits of an Indian reservation, national forest, or elsewhere upon lands exclusively within the jurisdiction of the United States, could claim the right to a hearing on habeas corpus by alleging in his petition that the trial court was without jurisdiction, thus retrying on habeas corpus one of the issues of fact required in every such case to be passed upon by the trial court and the jury * * *" [Page 199.]

In that case the court decided that, where the lack of jurisdiction does not appear affirmatively on the face of the record, such matters of law and fact are for the determination of the trial court and cannot be questioned on habeas corpus.

The indictment, in the case before us, recites that the jurisdiction of the United States over appellant is predicated upon the fact that the alleged crime was committed "within a certain place and on certain lands reserved and acquired for the exclusive use of the United States and under exclusive jurisdiction thereof, and acquired by the United States by consent of the legislature of the State of Georgia, to-wit: Chickamauga and Chattanooga National Park * * *." The question then arises, "Does the record affirmatively show that the United States was without jurisdiction?" Had the indictment gone no further than the phrase "and acquired by the United States by the consent of the legislature of the State of Georgia" and not added the words "to-wit: Chickamauga and Chattanooga National Park * * *," the question would undoubtedly have to be answered in the negative. It is argued that the addition of the latter phrase rendered the indictment fatally defective—it being asserted that the United States has no jurisdiction over the Chickamauga and Chattanooga National Park. But if the United States could constitu-

tionally acquire jurisdiction over the Park, then the question whether in fact the United States did have such jurisdiction over the Park and over the appellant becomes a seriously controverted question of law and fact within the meaning of Walsh v. Archer, supra, and it is not within our province to question this on habeas corpus. The record in this case does not disclose a lack of jurisdiction in the United [fol. 82] States unless it can be said that the United States is without power to exercise jurisdiction over a national park because lacking constitutional power to accept a cession thereof, with, of course, all of its incidents.

The recent case of Collins v. Yosemite Park and Curry Co., — U. S. — (decided by the Supreme Court May 31, 1938), removes all doubt as to this problem. In that case the parties contested the validity of a cession of exclusive jurisdiction by the State of California to the United States over Yosemite National Park (reserving to the State certain powers to serve process and to tax). In answering the contention that the United States could not constitutionally accept such cession, the court said:

"There is no question about the power of the United States to exercise jurisdiction secured by cession, though this is not provided for by Clause 17. [Of Art. 1, § 8 of the Federal Constitution.] [Citing cases.] And it has never been necessary, heretofore, for this Court to determine whether or not the United States has the constitutional right to exercise jurisdiction over territory, within the geographical limits of a State, acquired for purposes other than those specified in Clause 17. It was raised but not decided in Arlington Hotel Co. v. Fant, 278 U. S. 439, 454. It was assumed without discussion in Yellowstone Park Transportation Co. v. Gallatin County, 31 Fed. (2d) 644.

"* * * It is necessary to determine that question here. The United States has large bodies of public lands. These properties are used for forests, parks, ranges, wild life sanctuaries, flood control, and other purposes which are not covered by Clause 17. * * * No question is raised as to the authority to acquire land or provide for national parks. As the national government may, 'by virtue of its sovereignty' acquire lands within the borders of states by eminent domain and without their consent [citing James v. Dravo Contracting Co., 302 U. S. 134 and Kohl v. United States, 91 U. S. 367, 371, 372], the respective

sovereignities should be in a position to adjust their jurisdictions. There is no constitutional objection to such an adjustment of rights. * * *." [Page —.]

[fol. 83] Upon the authority of the foregoing, the question whether or not the United States could have had jurisdiction over the Chickamauga and Chattanooga National Military Park and over the appellant must be answered in the affirmative.

It is also contended that the indictment is defective in not describing with particularity the place of commission of the crime. We do not so hold, but even if it is such a question cannot be raised on habeas corpus. In Campbell v. Aderhold, 67 Fed. (2d) 246 (C. C. A. 5, 1933), the court said:

"We think the indictment fairly and naturally read does fail to charge the place of the crime and would have been bad on demurrer and probably on motion in arrest of judgment. In all such proceedings taken before the judgment becomes final, it is the duty of the court to scrutinize its record to be sure that it serves its purposes to inform the defendant fully of the charge against him, to confine the trial to that charge, and to indentify it as a protection against future double jeopardy. But when the defendant suffers a doubtful record to become final he may not freely criticize it in an indirect attack upon it. He is ordinarily conclusively bound by it on habeas corpus and may not contradict what it expressly asserts. Riddle v. Dyche, Warden, 262 U. S. 333, 43 Sup. Ct. 555, 67 L. Ed. 1009." [Page 246.]

This is a complete answer to appellant's contention.

Appellant also argues that the indictment does not charge that he committed a crime against the United States. The principal argument upon this point is that as three persons were charged, all three could not be guilty of murdering one man with one shot gun. The case of St. Clair v. United States, 154 U. S. 134, 14 Sup. Ct. 1002, 38 L. Ed. 936 (1894), disposes of this claim. In that case the Supreme Court, in answering a like contention, said:

"Equally without merit is the objection that the indictment does not show which one or more of the defendants committed the alleged assault. The indictment charged that the defendants, St. Clair, Sparf and Hansen, acting

jointly, killed and murdered Fitzgerald. The offense was one which, in its nature, might be committed by one or [fol. 84] more of the defendants. Proof of the guilt of either one would have authorized his conviction, and the acquittal of the others." [Page 1007 of 14 Sup. Ct.]

That the word "felony" or "feloniously" was not used in the charging part of the indictment avails the appellant nothing. In Myres v. United States, 256 Fed. 779 (C. C. A. 5, 1919), the court said:

"The plaintiff in error lastly criticizes the indictment because it does not charge that the offense was feloniously committed. The crime of murder under the federal law is defined by statute to be 'the unlawful killing of a human being with malice aforethought.' In defining murder in the first and second degree, and also manslaughter, the Penal Code does not make use of the word 'feloniously.' The offense being created and defined by statute, and the statute not using the word 'feloniously' in defining the crime, the indictment need not charge that it was done feloniously."

The other objections urged by the appellant are wholly insufficient in point of law and call for no discussion.

The order of the District Court is affirmed.

[File endorsement omitted.]

[fol. 85] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 8753

HUGH ALLEN BOWEN, Appellant,

vs.

JAMES A. JOHNSTON, Warden of the U. S. Penitentiary, Alcatraz, Appellee

JUDGMENT—Filed June 27, 1938

Appeal from the District Court of the United States for the Northern District of California, Southern Division

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for

the Northern District of California, Southern Division and was duly submitted.

On Consideration Whereof, it is now here ordered, adjudged, and decreed by this Court, that the order of the said District Court in this cause be, and hereby is, affirmed.

[File endorsement omitted.]

[fol. 86] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 87] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 10, 1938

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted, limited to the question of the jurisdiction of the District Court on habeas corpus.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: In forma pauperis. Enter Hugh Allen Bowen, pro se. File No. 42,844. U. S. Circuit Court of Appeals, Ninth Circuit. Term No. 359. Hugh Allen Bowen, petitioner, vs. James A. Johnston, Warden, United States Penitentiary, Alcatraz, California. Petition for a writ of certiorari. Filed September 16, 1938. Term No. 359, O. T., 1938.